

ASSEMBLY BILL

No. 1374

Introduced by Assembly Member Hertzberg

February 28, 1997

An act to amend Section 1033.5 of, and to add and repeal Title 11.5 (commencing with Section 1770) to Part 3 of, the Code of Civil Procedure, and to amend Section 68616 of the Government Code, relating to mediation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1374, as introduced, Hertzberg. Court mediation proceedings.

(1) Existing law authorizes the courts in the County of Los Angeles and other courts that elect to participate to order specified civil actions to mediation.

This bill would require the superior courts in the County of Los Angeles and authorize other superior courts to refer civil actions and proceedings to an early status conference at which the court could refer the parties to early mediation, as specified. The bill would require the Judicial Council to report to the Legislature on or before January 1, 2002, concerning mediation conducted under the bill. These provisions of the bill would be repealed on January 1, 2003. The bill would impose a state-mandated local program because it would impose new or additional duties on court personnel by requiring the mediation program in the County of Los Angeles.

(2) Existing law prohibits any trial court status conference from being required sooner than 30 days after service of the

first responsive pleading or sooner than 30 days after expiration of a stipulated continuance.

This bill would instead prohibit a status conference from being required sooner than 90 days after filing of the complaint.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1033.5 of the Code of Civil
2 Procedure is amended to read:

3 1033.5. (a) The following items are allowable as costs
4 under Section 1032:

5 (1) Filing, motion, and jury fees.

6 (2) Juror food and lodging while they are kept
7 together during trial and after the jury retires for
8 deliberation.

9 (3) Taking, videotaping, and transcribing necessary
10 depositions including an original and one copy of those
11 taken by the claimant and one copy of depositions taken
12 by the party against whom costs are allowed, and travel
13 expenses to attend depositions.

14 (4) Service of process by a public officer, registered
15 process server, or other means, as follows:

16 (A) When service is by a public officer, the
17 recoverable cost is the fee authorized by law at the time
18 of service.

(B) If service is by a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code, the recoverable cost is the amount actually incurred in effecting service, including, but not limited to, a stakeout or other means employed in locating the person to be served, unless such charges are successfully challenged by a party to the action.

(C) When service is by publication, the recoverable cost is the sum actually incurred in effecting service.

(D) When service is by a means other than that set forth in subparagraph (A), (B), or (C), the recoverable cost is the lesser of the sum actually incurred, or the amount allowed to a public officer in this state for such service, except that the court may allow the sum actually incurred in effecting service upon application pursuant to paragraph (4) of subdivision (c).

(5) Expenses of attachment including keeper's fees.

(6) Premiums on necessary surety bonds.

(7) Ordinary witness fees pursuant to Section 68093 of the Government Code.

(8) Fees of expert witnesses ordered by the court.

(9) Transcripts of court proceedings ordered by the court.

(10) ~~Attorney~~ Attorney's fees, when authorized by any of the following:

(A) Contract.

(B) Statute.

(C) Law.

(11) Court ~~reporters~~ reporter's fees as established by statute.

(12) Models and blowups of exhibits and photocopies of exhibits may be allowed if they were reasonably helpful to aid the trier of fact.

(13) *The mediator's fee paid pursuant to Title 11.5 (commencing with Section 1770) of Part 3.*

(14) Any other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial or on appeal.

(b) The following items are not allowable as costs, except when expressly authorized by law:

(1) Fees of experts not ordered by the court.

(2) Investigation expenses in preparing the case for trial.

(3) Postage, telephone, and photocopying charges, except for exhibits.

(4) Costs in investigation of jurors or in preparation for voir dire.

(5) Transcripts of court proceedings not ordered by the court.

(c) Any award of costs shall be subject to the following:

(1) Costs are allowable if incurred, whether or not paid.

(2) Allowable costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation.

(3) Allowable costs shall be reasonable in amount.

(4) Items not mentioned in this section and items assessed upon application may be allowed or denied in the court's discretion.

(5) When any statute of this state refers to the award of "costs and attorney's fees," attorney's fees are an item and component of the costs to be awarded and are allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a). Any claim not based upon the court's established schedule of attorney's fees for actions on a contract shall bear the burden of proof. Attorney's fees allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a) may be fixed as follows: (A) upon a noticed motion, (B) at the time a statement of decision is rendered, (C) upon application supported by affidavit made concurrently with a claim for other costs, or (D) upon entry of default judgment. Attorney's fees allowable as costs pursuant to subparagraph (A) or (C) of paragraph (10) of subdivision (a) shall be fixed either upon a noticed motion or upon entry of a default judgment, unless otherwise provided by stipulation of the parties.

1 Attorney's fees awarded pursuant to Section 1717 of the
2 Civil Code are allowable costs under Section 1032 as
3 authorized by subparagraph (A) of paragraph (10) of
4 subdivision (a).

5 SEC. 2. Title 11.5 (commencing with Section 1770) is
6 added to Part 3 of the Code of Civil Procedure, to read:

7
8 TITLE 11.5. EARLY MEDIATION
9

10 1770. (a) Except as provided in this title, all civil
11 actions and proceedings in a participating court where
12 the amount in controversy exceeds fifty thousand dollars
13 (\$50,000) shall be referred to an early status conference,
14 which shall serve as the court's initial status conference
15 and at which the court shall determine whether to refer
16 the parties to an early mediation in accordance with this
17 title.

18 (b) The participating courts shall be the superior court
19 in Los Angeles County and other superior courts that
20 elect to apply this title.

21 (c) "Mediation" means a process in which a neutral
22 person or persons facilitate communication between the
23 parties to a dispute to assist them in reaching a mutually
24 acceptable agreement.

25 (d) The determination of the amount in controversy
26 shall be made in the same manner as provided in Section
27 1141.16 and in making this determination the court shall
28 not consider the merits of questions of liability, defenses,
29 or comparative negligence.

30 1770.1. The early status conference shall be scheduled
31 not earlier than 90 days and not later than 150 days of the
32 filing date of the complaint. However, at or before the
33 conference, any party may request that the early status
34 conference be continued on the grounds that the party
35 has been unable to serve an essential party to the
36 proceeding.

37 The court shall not refer the parties to an early
38 mediation at the early status conference where the court,
39 in its discretion, determines that there is good cause for
40 not ordering the early mediation.

1 1770.2. The court shall schedule the early mediation
2 conference within 60 days following the early status
3 conference unless the parties stipulate to a later date that
4 is within 120 days following the early status conference or
5 the court finds, for good cause, that a later date is
6 necessary, or where counsel, a party, or the mediator is
7 unavailable during that time period, or the court finds
8 that discovery reasonably necessary for a meaningful
9 mediation cannot be conducted prior to the end of that
10 period.

11 1770.3. At the early status conference, where the
12 court refers the parties to an early mediation, the court
13 shall designate a mediator who has been agreed upon by
14 the parties to the proceeding, or failing an agreement,
15 who is selected by the court from the names of mediators
16 submitted by the parties. In those instances where the
17 parties are unable to reach agreement, each party shall
18 present to the court at the status conference the names,
19 addresses, and billing rates of no more than three
20 individuals, whom that party represents in writing to the
21 court would be available to conduct the mediation within
22 the next 60 days. At or before the status conference, each
23 party shall be entitled to strike two names from each of
24 the other parties' lists, and those individuals shall not be
25 considered as a mediator. Each party shall serve its list of
26 potential mediators on all other parties to the proceeding
27 no later than seven court days before the status
28 conference.

29 1770.4. The court shall schedule the early mediation
30 within 60 days following the early status conference
31 unless it finds, for good cause, that a later date is
32 necessary, or where counsel, a party, or the mediator is
33 unavailable during that time period, or the court finds
34 that discovery reasonably necessary for a meaningful
35 mediation cannot be conducted prior to the end of that
36 period.

37 1770.5. The mediation shall not exceed six hours in
38 length unless the parties otherwise agree.

39 1770.6. Trial counsel, parties, and persons with full
40 authority to settle the case shall personally attend the



1 conference, unless excused by the court for good cause.
2 If any consent to settle is required for any reason, the
3 party with that consent authority shall be personally
4 present at the conference.

5 1770.7. (a) In the event that the parties to the
6 mediation are unable to reach a mutually acceptable
7 agreement and any party to the mediation wishes to
8 terminate the mediation, the mediator shall file a
9 statement of nonagreement. This statement shall be on a
10 form developed by the Judicial Council.

11 (b) Upon the filing of a statement of nonagreement,
12 the matter shall be calendared for trial, by court or by
13 jury, both as to law and fact, insofar as possible, so that the
14 trial shall be given the same place on the active list as it
15 had prior to mediation, or the matter shall receive civil
16 priority on the next setting calendar.

17 1770.8. All statements made by the parties during the
18 mediation shall be subject to Sections 1152 and 1152.5 of
19 the Evidence Code.

20 1771. Each party to the proceeding shall share equally
21 in the fee of the mediator, except where the parties agree
22 otherwise. The obligation of the parties for the mediator's
23 fee is limited to six hours of actual mediation, and does not
24 include preparation time, travel time, and postmediation
25 time, unless the parties agree otherwise. If the dispute is
26 not resolved by the mediation, the prevailing party in the
27 civil proceeding shall be entitled, as a matter of right, to
28 recover his or her share of the fee as costs of the
29 proceeding under Section 1032.

30 1771.1. Notwithstanding Section 1771, any party who
31 has been granted permission to proceed in forma
32 pauperis shall not be required to share in the payment of
33 the mediator's fee.

34 1771.2. Unless expressly provided otherwise by
35 statute or any local rule that is in effect on January 1, 1998,
36 any party who participates in a mediation under this title,
37 or who has completed a voluntary mediation with all of
38 the other parties, is exempt from being compelled to
39 participate in any other judicially ordered arbitration or
40 mediation.

1 1771.3. An appearance at an early status conference
2 or mediation ordered under this title shall not be deemed
3 a general appearance and does not constitute a waiver of
4 the right to make a motion under Section 418.10.

5 1771.4. This title does not apply to any of the
6 following:

7 (a) Juvenile and probate proceedings, proceedings
8 under the Family Code, and special proceedings of a civil
9 nature under Part 3 (commencing with Section 1063).

10 (b) Any proceeding subject to judicial arbitration
11 pursuant to Chapter 2.5 (commencing with Section
12 1141.10) of Title 3 or mediation pursuant to Title 11.6
13 (commencing with Section 1775).

14 (c) Any case assignment to a particular judge or judges
15 based on subject matter.

16 (d) Any proceeding in which a government entity is
17 a party unless the attorney for that entity agrees that the
18 entity shall participate.

19 1771.5. Nothing in this title shall be construed to
20 preempt other current or future alternative dispute
21 resolution programs operating in the trial courts.

22 1771.6. Nothing in this title precludes all or some of
23 the parties to a proceeding from voluntarily agreeing to
24 mediate their dispute at any time.

25 1771.7. The Judicial Council may adopt any rules
26 necessary or appropriate to implement this title.

27 1771.8. Any reference to the mediation during any
28 subsequent trial shall constitute an irregularity in the
29 proceedings of the trial for purposes of Section 657.

30 1771.9. On or before January 1, 2002, the Judicial
31 Council shall submit a report to the Legislature
32 concerning mediation conducted pursuant to this title.
33 This report shall include, but not be limited to, a review
34 of the program in Los Angeles County and other courts
35 that have elected to apply this title. The report shall
36 examine, among other things, the effect of this title on the
37 judicial mediation programs of courts that have
38 participated in that program. The Judicial Council shall,
39 by rule, require that each court applying this title to file

1 with the Judicial Council data that will enable the Judicial
2 Council to submit the report required by this section.

3 1772. This title shall remain in effect only until
4 January 1, 2003, and as of that date is repealed, unless a
5 later enacted statute, which is enacted before January 1,
6 2003, deletes or extends that date.

7 SEC. 3. Section 68616 of the Government Code, as
8 amended by Section 16 of Chapter 1159 of the Statutes of
9 1996, is amended to read:

10 68616. Delay reduction rules shall not require shorter
11 time periods than as follows:

12 (a) Service of the complaint within 60 days after filing.
13 Exceptions, for longer periods of time, may be granted as
14 authorized by local rule.

15 (b) Service of responsive pleadings within 30 days
16 after service of the complaint. The parties may stipulate
17 to an additional 15 days. Exceptions, for longer periods of
18 time, may be granted as authorized by local rule.

19 (c) Time for service of notice or other paper under
20 Sections 1005 and 1013 of the Code of Civil Procedure and
21 time to plead after service of summons under Section
22 412.20 of the Code of Civil Procedure shall not be
23 shortened except as provided in those sections.

24 (d) Within 30 days of service of the responsive
25 pleadings, the parties may, by stipulation filed with the
26 court, agree to a single continuance not to exceed 30 days.

27 It is the intent of the Legislature that these stipulations
28 not detract from the efforts of the courts to comply with
29 standards of timely disposition. To this extent, the Judicial
30 Council shall develop statistics that distinguish between
31 cases involving, and not involving, these stipulations.

32 (e) No status conference, or similar event, other than
33 a challenge to the jurisdiction of the court, may be
34 required to be conducted sooner than ~~30~~ 90 days after
35 ~~service of the first responsive pleadings, or no sooner than~~
36 ~~30 days after expiration of a stipulated continuance, if any,~~
37 ~~pursuant to subdivision (d) the filing of the complaint.~~

38 (f) Article 3 (commencing with Section 2016) of
39 Chapter 3 of Title 3 of Part 4 of the Code of Civil
40 Procedure shall govern discovery, except in arbitration

1 proceedings, and the time periods set forth in that article
2 may not be shortened by local rule.

3 (g) An order referring an action to arbitration or
4 mediation may be made at any status conference held in
5 accordance with subdivision (e), provided that any
6 arbitration ordered may not commence prior to 210 days
7 after the filing of the complaint, exclusive of the
8 stipulated period provided in subdivision (d). Any
9 mediation ordered pursuant to Section 1775.3 of the Code
10 of Civil Procedure may be commenced prior to 210 days
11 after the filing of the complaint, exclusive of the
12 stipulated period provided in subdivision (d). No rule
13 adopted pursuant to this article may contravene Sections
14 638 and 639 of the Code of Civil Procedure.

15 (h) Unnamed (DOE) defendants shall not be
16 dismissed prior to the conclusion of the introduction of
17 evidence at trial, except upon stipulation or motion of the
18 parties.

19 (i) Notwithstanding Section 170.6 of the Code of Civil
20 Procedure, in direct calendar courts, challenges pursuant
21 to that section shall be exercised within 15 days of the
22 party's first appearance. Master calendar courts shall be
23 governed solely by Section 170.6 of the Code of Civil
24 Procedure.

25 (j) This section applies to all cases subject to this article
26 which are filed on or after January 1, 1991.

27 (k) This section shall remain in effect only until
28 January 1, 1999, and as of that date is repealed, unless a
29 later enacted statute, which is enacted before January 1,
30 1999, deletes or extends that date.

31 SEC. 4. Section 68616 of the Government Code as
32 amended by Section 17 of Chapter 1159 of the Statutes of
33 1996, is amended to read:

34 68616. Delay reduction rules shall not require shorter
35 time periods than as follows:

36 (a) Service of the complaint within 60 days after filing.
37 Exceptions, for longer periods of time, may be granted as
38 authorized by local rule.

39 (b) Service of responsive pleadings within 30 days
40 after service of the complaint. The parties may stipulate

1 to an additional 15 days. Exceptions, for longer periods of
2 time, may be granted as authorized by local rule.

3 (c) Time for service of notice or other paper under
4 Sections 1005 and 1013 of the Code of Civil Procedure and
5 time to plead after service of summons under Section
6 412.20 of the Code of Civil Procedure shall not be
7 shortened except as provided in those sections.

8 (d) Within 30 days of service of the responsive
9 pleadings, the parties may, by stipulation filed with the
10 court, agree to a single continuance not to exceed 30 days.

11 It is the intent of the Legislature that these stipulations
12 not detract from the efforts of the courts to comply with
13 standards of timely disposition. To this extent, the Judicial
14 Council shall develop statistics that distinguish between
15 cases involving, and not involving, these stipulations.

16 (e) No status conference, or similar event, other than
17 a challenge to the jurisdiction of the court, may be
18 required to be conducted sooner than ~~30~~ 90 days after
19 ~~service of the first responsive pleadings, or no sooner than~~
20 ~~30 days after expiration of a stipulated continuance, if any,~~
21 ~~pursuant to subdivision (d) the filing of the complaint.~~

22 (f) Article 3 (commencing with Section 2016) of
23 Chapter 3 of Title 3 of Part 4 of the Code of Civil
24 Procedure shall govern discovery, except in arbitration
25 proceedings, and the time periods set forth in that article
26 may not be shortened by local rule.

27 (g) No case may be referred to arbitration prior to 210
28 days after the filing of the complaint, exclusive of the
29 stipulated period provided for in subdivision (d). No rule
30 adopted pursuant to this article may contravene Sections
31 638 and 639 of the Code of Civil Procedure.

32 (h) Unnamed (DOE) defendants shall not be
33 dismissed prior to the conclusion of the introduction of
34 evidence at trial, except upon stipulation or motion of the
35 parties.

36 (i) Notwithstanding Section 170.6 of the Code of Civil
37 Procedure, in direct calendar courts, challenges pursuant
38 to that section shall be exercised within 15 days of the
39 party's first appearance. Master calendar courts shall be

1 governed solely by Section 170.6 of the Code of Civil
2 Procedure.

3 (j) This section applies to all cases subject to this article
4 which are filed on or after January 1, 1991.

5 (k) This section shall become operative on January 1,
6 1999.

7 SEC. 5. Notwithstanding Section 17610 of the
8 Government Code, if the Commission on State Mandates
9 determines that this act contains costs mandated by the
10 state, reimbursement to local agencies and school
11 districts for those costs shall be made pursuant to Part 7
12 (commencing with Section 17500) of Division 4 of Title
13 2 of the Government Code. If the statewide cost of the
14 claim for reimbursement does not exceed one million
15 dollars (\$1,000,000), reimbursement shall be made from
16 the State Mandates Claims Fund.

17 Notwithstanding Section 17580 of the Government
18 Code, unless otherwise specified, the provisions of this act
19 shall become operative on the same date that the act
20 takes effect pursuant to the California Constitution.

